

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-21704-CIV-UNGARO/SIMONTON

HARSH SHARMA,

Plaintiff,

v.

UNITED STATES ATTORNEY GENERAL, et al.,

Defendants.

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**ORDER GRANTING MOTION TO PROCEED IN FORMA
PAUPERIS AND MOTION TO SERVE SUMMONS**

Presently pending before the Court are Plaintiff's Motion to Proceed In Forma Pauperis (DE # 3), Plaintiff's Motion to Serve Summons (DE # 4), and Plaintiff's Motion For Service of Summons Process pursuant to FRCP rule 4 (DE # 6). The Honorable Ursula Ungaro, United States District Judge, has referred this case to the undersigned Magistrate Judge to take all necessary and proper action as required by law (DE # 5).

Plaintiff Sharma moves to proceed in forma pauperis. Title 28 U.S.C. § 1915 provides that a court may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets the person possesses and a statement that the person is unable to pay such fees or give security therefor. If a prisoner seeks to bring a civil action without prepayment of fees or security therefor, the prisoner must submit, in addition to the aforementioned affidavit, a certified copy of his trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint. The statement must be obtained from the appropriate official of each prison at which the prisoner is or

was confined during the 6-month period immediately preceding the filing of the complaint.

Pursuant to 28 U.S.C. §1915(b), as amended April 26, 1996, if a prisoner brings a civil action in forma pauperis, the prisoner must be required to pay the full filing fee. Initially, the Court must assess 20% of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the complaint. Thereafter, the prisoner must make payments of 20% of the preceding month's income credited to his account; and, the agency having custody of the prisoner must forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10.00 until the filing fees are paid.

Sharma has filed an affidavit stating that he is incarcerated in the Federal Correctional Institution at Miami, Florida and that he has no income and no assets. Sharma has also provided a computerized summary of his account from December 10, 2009 through May 10, 2010. His average monthly balance is \$2.07, and his average monthly deposits equal \$1.88. Based upon Plaintiff's average monthly balance, Plaintiff must pay \$0.41 to the Clerk of Court in order to proceed in forma pauperis. Thereafter, 20% of the preceding month's income credited to his account must be forwarded by the agency having custody of Sharma, whenever the account exceeds \$10.00.

It is therefore

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion to Proceed In Forma Pauperis (DE # 3), Motion to Serve Summons (DE # 4), and Motion For Service of Summons Process pursuant to FRCP rule 4 (DE # 6), are **GRANTED**.

2. On or before July 23, 2010, Sharma shall submit a payment to the Clerk of Court in the amount of \$0.41.

3. Thereafter, Sharma must make payments of 20% of the preceding month's income credited to his account. The prison having custody of Sharma must make payments to the Clerk of the Court each time the amount in the account exceeds \$10.00 until the full filing fee of \$150.00 is paid. Sharma is advised that the Court shall take no further action with respect to the Complaint until the initial payment has been made.

4. Sharma shall prepare and return the summonses provided with this order to the Clerk of Court on or before July 23, 2010. Since Sharma has been declared indigent, service shall be made by made by the United States Marshal, as provided below in paragraph 5. However, Sharma must provide sufficient summonses so that service may be made in accordance with Fed.R.Civ.P. 4(i), which provides:

(i) Serving the United States and Its Agencies, Corporations, Officers or Employees.

(1) United States. To serve the United States, a party must:

- (A)(i)* deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or
- (ii)* send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B)* send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and
- (C)* if the action challenges an order of a non-party agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency: Corporation; Officer or Employee Sued in an Official Capacity.

To serve a United States agency or corporation, or a United States officer or employee served only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

5. Upon receipt of the initial payment, the clerk shall issue the summonses prepared by Sharma, and the United States Marshal shall serve a copy of the complaint, summons and this order upon Defendants. All costs of service shall be advanced by the United States.

6. Defendants shall have sixty days from the date of service of process to respond to the Complaint.

DONE AND ORDERED in chambers at Miami, Florida, on June 23, 2010.



ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Ursula Ungaro
United States District Judge
Harsh Sharma, pro se
Reg. No. 34507-018
FCI Miami
P.O. Box 779800
Miami, FL 33177
(mailed by chambers with ten
blank summonses enclosed)